

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

A123 SYSTEMS LLC,

Plaintiff

v.

APPLE INC., MUJEEB IJAZ, DON DAFOE,
MICHAEL ERICKSON, DEPENG WANG and
INDRAJEET THORAT,

Defendants.

Civil Action No.

NOTICE OF REMOVAL

Defendant Apple Inc. (“Apple”) files this Notice of Removal in accordance with 28 U.S.C. §§ 1332, 1441 and 1446 and hereby removes this action from the Superior Court of the Commonwealth of Massachusetts, Middlesex County (the “Superior Court”), to the United States District Court for the District of Massachusetts. As its reasons for removal, Apple states as follows:

1. On or about February 6, 2015, plaintiff A123 Systems LLC commenced a civil action in the Superior Court titled *A123 Systems LLC v. Apple Inc., Mujeeb Ijaz, Don Dafoe, Michael Erickson, Depeng Wang and Indrajeet Thorat*, Case Number 15-00482-H (the “Pending Action”).

2. Apple was served on February 17, 2015. Therefore, this Notice of Removal is timely. *See* 28 U.S.C. §1446(b). No other named defendant has been served as of the filing of this Notice of Removal.

DIVERSITY OF CITIZENSHIP

3. This Court has diversity jurisdiction over the Pending Action pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

4. Plaintiff A123 Systems LLC is a limited liability company organized under the laws of the State of Delaware, with a principal place of business at 39000 Seven Mile Road, Livonia, Michigan. *See* Complaint ¶ 1, attached at Exhibit A.

5. Defendant Apple Inc. is a corporation organized under the laws of the State of California, with a principal place of business at 1 Infinite Loop, Cupertino, California.

6. Defendant Mujeeb Ijaz is a resident of the State of California.

7. Defendant Don Dafoe is a resident of the State of California.

8. Defendant Michael Erickson is a resident of the State of California.

9. Defendant Depeng Wang is a resident of the State of California.

10. Defendant Indrajeet Thorat is a resident of the State of California.

11. Thus, there is complete diversity among the parties.

12. Although the Complaint does not specify the precise amount of damages sought, the Complaint seeks an award to A123 of “monetary damages, in an amount to be proved at trial, for the economic injury it has sustained as a consequence of Defendants’ conduct,” as well as its “costs and attorney fees.” Exh. A at 16. Among other things, Plaintiff brings claims against all Defendants under the Massachusetts Unfair Competition statute, M.G.L. c. 93A, which allows for the recovery of treble damages. Likewise, Plaintiff asserts claims under M.G.L. c. 93, § 42, which allows for double damages. “When a plaintiff makes a claim under a statute including a damage multiplier, a court must apply that factor in evaluating the amount in controversy.”

Lucas v. Ultima Framingham LLC, 973 F.Supp.2d 98, 101 (D.Mass. 2013). Furthermore, c. 93A allows for the recovery of attorneys' fees and costs. "A court must take into account attorneys' fees where, as here, the award of those fees is statutorily authorized." *Lucas*, 973 F.Supp.2d at 101 (quoting *Spielman v. Genzyme Corp.*, 251 F.3d 1, 6 (1st Cir. 2001)). Moreover, Plaintiff seeks to enjoin the individual defendants from working for one year, with concomitant losses of wages by those defendants. Given the allegations in the Complaint, including but not limited to those recounted herein, it is likely that the amount in controversy in this case exceeds \$75,000.00, exclusive of interest and costs.

13. Accordingly, this Court has jurisdiction over the Pending Action pursuant to 28 U.S.C. § 1332(a).

14. Attached hereto as Exhibit A is true and correct copy of all process, pleadings (including the Verified Complaint, Corporate Disclosure Statement, Tracking Order, Civil Action Cover Sheet, Plaintiff's Motion for Appointment of Special Process Server (Allowed), Plaintiff's Motion for Short Order of Notice, Summons and Order of Notice for each Defendant, Plaintiff A123 Systems LLC's Motion for Temporary Restraining Order, Preliminary Injunctive Relief, and Expedited Discovery, Affidavit of Patrick Hurley in Support of Plaintiff's Request for a Temporary Restraining Order and Preliminary Injunctive Relief, and Plaintiff A123 Systems LLC's Memorandum of Law in Support of Motion for Temporary Restraining Order, Preliminary Injunctive Relief, and Expedited Discovery), served on Apple in the Pending Action. See 28 U.S.C. § 1446(a).

15. Thus, the Pending Action is properly removed to this Court under 28 U.S.C. §§ 1441 and 1446 because it is pending in Middlesex County, Massachusetts, which lies within this District.

16. A true and complete copy of this Notice of Removal has been served this day by hand-delivery upon the Clerk of the Superior Court for filing in accordance with 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal is attached hereto as Exhibit B, the original of which is being filed with the Middlesex County Superior Court Civil Clerk. This Notice of Removal and a Notice of Filing of Notice of Removal have also been served this day via hand delivery upon Plaintiff's counsel.

Respectfully submitted,

APPLE INC.,

By its attorneys,

/s/ Stephen T. Melnick

Michael Mankes (BBO No. 662127)

Stephen T. Melnick (BBO No. 667323)

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Dated: February 17, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February 2015, a true and accurate copy of this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and sent via hand delivery or first class mail to unregistered participants, including the attorney of record for plaintiff:

(Via Hand-Delivery)

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